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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,602	03/01/2004	Lyndsay Williams	M1103.70797US00	9169
69316 7590 07/29/2011 MICROSOFT CORPORATION ONE MICROSOFT WAY REDMOND, WA 98052				
EXAMINER BERTRAM, ERIC D				
ART UNIT		PAPER NUMBER		
3766				
NOTIFICATION DATE		DELIVERY MODE		
07/29/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/790,602

Applicant(s)

WILLIAMS ET AL.

Examiner

Eric D. Bertram

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,7-9,13-17,20,21,29-33 and 44-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,7-9,13-17,20,21,29-33 and 44-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/24/2011 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 4, 7-9, 13-17, 20, 21, 29-33 and 44-51 have been considered but are moot in view of the new ground(s) of rejection, necessitated by applicant's amendments.

3. Regarding the 35 USC 101 rejections, the applicant's amendments are not persuasive. A "computer program storage medium" even though not disclosed by the specification, still encompasses transitory propagating signals, since a signal will store computer programs temporarily in the signal. Furthermore, the specification does not recite that "computer program storage medium" cannot be in the form of a transitory propagating signal. Regardless, per the Notice from David Kappos, dated 1/26/2010, any claims reciting a "computer readable storage medium" must be rejected under 35 USC 101 unless the phrase "non-transitory" is added to the claims. If the applicant is not trying to claim the non-transitory embodiment, amending the claims to exclude this embodiment should not be an issue.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 32 is rejected under 35 U.S.C. 101 because the broadest reasonable interpretation (BRI) of a claim drawn to a computer readable medium covers forms of non-transitory tangible media as well as transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media. See MPEP 2111.01. Since the BRI of the claims covers a signal *per se*, the claim is rejected as covering non-statutory subject matter. In order to overcome this rejection, the applicant may add the phrase "non-transitory" in front of "computer readable medium".

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1, 4, 8, 9, 15, 17, 20, 30-33, and 44-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson (US 4,901,096) in view of Ishibashi (US 6,558,050).

10. Regarding claims 1, 8, 9, 17, 32, 44, 45, 47, 48 and 51, Lemelson discloses a portable recall device 10 configured to be carried by a user (read as a wearer), which includes a camera 10A (see figure 1 and Col. 1, lines 8-12). Lemelson further discloses an accelerometer 16 operably connected to the camera that will only allow capture of an image if a stable condition is detected (Col. 3, lines 12-29). If the movement of the accelerometer exceeds a predetermined threshold, an image will not be captured. Lemelson further discloses a plurality of environmental sensors that sense multiple ambient conditions, including ambient light and distances (Col. 3, lines 5-11). Only after the device has become stable, i.e., the acceleration is below a threshold, is the camera triggered to open its shutter and capture an image. However, Lemelson is silent as to using ambient conditions to determine whether to capture an image or not.

11. Attention is directed to the secondary reference of Ishibashi, which discloses a portable recall device 1 that is configured to be carried by a wearer as shown in figure 1. The device includes a camera, as well as a three dimensional head orientation detecting unit 4 (Col. 2, lines 30-56). The device also includes a plurality of ambient condition sensors that detect conditions external to the camera, including changes in temperature, sound, pulse rate, perspiration, blood pressure (see figure 4 and Col. 2, lines 57-60 and Col. 4, lines 21-36). If a change in one or more of these ambient conditions is detected and is followed by the detection of a stable head orientation by the head orientation detecting unit at step #50, then a shooting instruction is automatically outputted to the video camera circuit (Col. 4, lines 48-49). Therefore, Ishibashi discloses that using the change in ambient conditions as a capture condition for a camera is old and well known in the art, and the incorporation of this feature in the analogous art of Lemelson would have been obvious to one of ordinary skill in the art at the time of the applicant's invention in order to automatically record information useful to the wearer (Col. 1, lines 35-61). .
12. Regarding claims 4 and 20, ambient sounds will only be recorded if ambient sounds are present and detected (Col. 3, lines 15-18).
13. Regarding claims 15 and 30, the capture of the image will be delayed until the stable condition is detected.
14. Regarding claim 31, a user of a camera will inherently (or at least obviously) review the images taken by the camera at a later point in time.

15. Regarding claims 49 and 50, a user will necessarily, or at least obviously, play back and view the captured images and the images will necessarily aid a person in remembering the activity in the image.

16. Regarding claims 33 and 46, camera of Lemelson can continuously capture images if so desired by a user, and the controller can save or delete pictures based on various conditions if so desired by a user. This functional language is an intended use of the device unless the device is somehow claimed to be structurally different, such as be saying the controller and camera are "programmed to" or "configured to" perform the functional language. Otherwise, the limitations merely represent intended use that Lemelson is capable of performing. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

17. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson and Ishibashi in view of Yoshihiro et al. (JP 2000-196934, hereinafter Yoshihiro; paragraph references are to the English translation).

18. As described above, Lemelson and Ishibashi disclose utilizing environmental sensors to detect ambient conditions, including ambient light. As modified by Ishibashi, Lemelson will capture images based on detected changes in ambient conditions. However, neither Lemelson nor Ishibashi specifically discloses detecting a change in ambient light to determine whether to capture an image. Attention is directed to the secondary reference of Yoshihiro, which discloses a digital media player shown in figure

1 which includes a digital camera 100 that stores digital media in flash memory 50 and displays digital media on LCD display 40 (par. 0017, 0020, 0026-0028). An environmental sensor detects the ambient light, and when a change in the ambient light is above a first threshold, a controller causes capture of an image. If the change in ambient light is not above a first threshold, then no image is captured (par. 0040-0042 and abstract). Therefore, Yoshihoro discloses that using the change in ambient light as a capture condition for a camera is old and well known in the art, and the incorporation of this feature in the analogous art of Lemelson would have been obvious to one of ordinary skill in the art at the time of the applicant's invention in order to automatically record information useful to the wearer.

19. Claims 13, 14 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson and Ishibashi in view of Grosvenor et al. (US 2003/0025798, hereinafter Grosvenor). Lemelson, as described above, discloses the applicant's basic invention, including the use of an accelerometer to detect motion of a user and a camera held by the user. However, Lemelson is silent as to using a plurality of accelerometers or a gyroscope to detect the motion. While the use of gyroscopes and/or accelerometers are notoriously old and well known in the art for detecting rotational/angular movement of an object, attention is directed to the secondary reference of Grosvenor, which discloses the use of one or more gyroscopes or accelerometers to measure movement of a camera that is attached to a user (par. 0068). Specifically, Grosvenor discloses the use of a plurality of accelerometers for detecting rotation along three axes (par. 0069). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

applicant's invention to modify the device of Lemelson by using at least one gyroscope or a plurality of accelerometers to detect angular/rotational movement since Grosvenor demonstrates that they would be fully capable of detecting the motion of the user and the camera held by the user, which would help guarantee a stable condition, as required by Lemelson.

20. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson and Ishibashi in view of Moultrie, Jr. (US 2002/0159770, hereinafter Moultrie). Lemelson, as described and modified above, discloses the applicant's basic invention including using ambient temperature to capture an image. However, Lemelson is silent as to detecting a change in the signal from a passive infrared detector triggered by heat from a person in the proximity of the camera. Attention is directed to the secondary reference of Moultrie, which discloses a camera that is activated by detecting a change in the signal from a passive infrared detector triggered by heat from an animal in the proximity of the camera (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art to modify the camera of Lemelson by adding capture condition detection with an infrared sensor as taught by Moultrie in order to make the system automatic and allow the user to take images of interest without having to be with the camera.

21. Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson and Ishibashi in view of Horimoto (US 4,009,943). Lemelson, as described above, discloses the applicant's basic invention with the exception of using a wide-angle lens. However, the use and advantages of a wide-angle lens is notoriously old and well

known in the art, as taught by Horimoto (Col. 1, lines 11-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the device of Yoshihiro by including a wide-angle lens in order to capture the true perspective of what the actual object would appear to an observer (Col. 1, lines 13-18).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is (571)272-3446. The examiner can normally be reached on Monday-Friday from 10-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric D. Bertram/
Primary Examiner, Art Unit 3766